1 Larry A. Hammond, 004049 Anne M. Chapman, 025965 2009 DEC 17 PM 1: 10 2 OSBORN MALEDON, P.A. JEAR LINCKS, CLERK 3 2929 N. Central Avenue, 21st Floor Phoenix, Arizona 85012-2793 4 Shaunna Kelbaugh (602) 640-9000 lhammond@omlaw.com 5 achapman@omlaw.com 6 John M. Sears, 005617 7 P.O. Box 4080 Prescott, Arizona 86302 (928) 778-5208 8 John.Sears@azbar.org 9 Attorneys for Defendant 10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 11 IN AND FOR THE COUNTY OF YAVAPAI 12 STATE OF ARIZONA. 13 No. P1300CR20081339 Plaintiff. 14 Div. 6 15 **DEFENDANT'S MOTION FOR** VS. JURY OUESTION, INDIVIDUAL STEVEN CARROLL DEMOCKER, 16 SEOUESTERED VOIR DIRE AND FOR ADOPTION OF JURY Defendant. 17 **SELECTION PLAN** 18 19 20 Defendant Steven DeMocker, by and through his counsel, hereby moves this 21 Court for an order directing the use of a written jury questionnaire, for individual 22 sequestered voir dire, and for the adoption of his comprehensive jury selection plan 23 previously presented to the Court. In making this motion, Defendant does not intend to 24 waive any of his constitutional arguments and objections to the death qualification of 25 the jury, or to the death penalty itself and as it is applied in this case. Rather, this 26 motion is made in the interest of assisting the Court in formulating an appropriate and 27

28

1 constitutional jury selection process in this case. Defendant respectfully incorporates the 2 remarks of his counsel made at the December 9, 2009 hearing on these matters. ARGUMENT Attached hereto as Exhibit A is a proposed jury questionnaire, at the Court's 4 request. Mr. DeMocker believes that is both appropriate and reasonable, and asks that it 5 be used as part of the comprehensive jury selection plan he presented to the Court on 6 7 December 9, 2009. Attached hereto as Exhibit B is a summary of the timetable and protocol for jury 9 selection previously presented by Defendant. In general, the plan calls for the use of a 10 questionnaire to be filled out in small groups by potential jurors at a designated location 11 or locations, cooperation between the parties thereafter with respect to stipulated strikes 12 based upon answers from the questionnaires to be presented to the Court for a final 13 ruling, and ending with individual voir dire) commencing on the first day scheduled for 14 trial. Defendant believes this comprehensive jury selection plan will be efficient, timesaving and will produce a fair and impartial jury to hear this case. 15 16 CONCLUSION Defendant Steven DeMocker, by and through counsel, hereby requests that this 17 18 Court use the attached jury questionnaire, permit individual sequestered voir dire, and 19 adopt his detailed jury selection plan. 20 DATED this 17th day of December, 2009. 21 By: 22 John M. Sears P.O. Box 4080 23 Prescott, Arizona 86302 24 OSBORN MALEDON, P.A. 25 Larry A. Hammond Anne M. Chapman 26 2929 N. Central Avenue, Suite 2100 Phoenix, Arizona 85012-2793 27

28

1		Attamania for Defendent
2		Attorneys for Defendant
3	ORIGINAL of the foregoing filed this 17 th day of December, 2009, with:	
4		
5	Jeanne Hicks Clerk of the Court Yavapai County Superior Court	
6	120 S. Cortez Prescott, AZ 86303	
7		
8	COPIES of the foregoing delivered this 17 th day of December, 2009, to:	
9	The Hon. Thomas B. Lindberg	
10	Judge of the Superior Court Division Six 120 S. Cortez	
11	Prescott, AZ 86303	
12	Joseph C. Butner, Esq. Yavapai County Attorney	
13	Prescott courthouse basket	
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

	Juror #	
State of Arizona v.	Steven DeMocker	

Name:

The Court instructs you not to discuss anything about this case with anyone: not the lawyers, your fellow jurors, your friends, or anyone else, including your spouse and your family. If anyone approaches you and attempts to learn about any aspect of the case or this questionnaire, including the questions, your answers, and the case summary, you may not answer their inquiries. If they persist, you should report this to the Court or to the Jury Commissioner.

YOU ARE SWORN TO GIVE TRUE AND COMPLETE ANSWERS TO ALL QUESTIONS IN THIS QUESTIONNAIRE. The purpose of this questionnaire is not to ask unnecessarily about personal matters, but to determine if there is anything about this case or the nature of the crimes charged that might cause you to be less than a 100% fair and impartial juror in considering this criminal case. There are no "right" or "wrong" answers; there are only truthful answers. It is essential that your answers are not influenced by the opinions of others. You should fill out the questionnaire in this Jury Assembly Room by yourself without consulting or talking with any other person.

It is important that you respond to every question. If no response is given and questions are left blank, further questioning by the Court and/or the attorneys will be necessary. If you cannot answer a question because you do not understand it, write "Do not understand" in the space after the question. If you cannot answer a question because you do not know the answer, write "Do not know" in the space after the question. If you need extra space to answer any question, please use the extra blank sheets of paper included at the end of the questionnaire. Be sure to include the question number with the remainder of your answer.

Personal private information you provide will be treated as confidential. All information will be shared at this stage only with the parties involved in this case. Your original questionnaires will become part of the official court record and all copies will be returned to the court and destroyed. The questionnaires will be photo copied so that the parties participating in the jury selection process will have a copy. Do not write on the backside of the pages of the questionnaire,

Juro	r#	

IT IS VERY IMPORTANT THAT YOUR ANSWERS BE YOUR OWN INDIVIDUAL ANSWERS.

PRELIMINARY MATTERS

This trial is expected to take several months. It should start on May 4, 2010, and
the end of the case will depend on circumstances that cannot always be anticipated
The Court and parties expect that jurors may be required to serve for at least two
months. The jury will hear evidence Wednesday through Friday from a.m. to
p.m. There will be breaks during the day, including a short lunch break. We
will also break on the following days: [If there are any holidays or other known
calendar conflicts that the Court will have to schedule around, we should put them
in here]. Due to the length of the trial, reasonable efforts will be made to
· · · · · · · · · · · · · · · · · · ·
accommodate the special needs of individual jurors.
CASE SUMMARY
Steven DeMocker is charged with entering the home of his former wife Carol
Kennedy in Prescott, Arizona on the evening of July 2, 2008 and bludgeoning her
to death. Mr. DeMocker has entered pleas of not guilty to these charges.
2
Is there anything about the nature of this crime or what you believe you know
about the people or events surrounding this case that could prevent you from being
a fair and impartial juror?
Yes No
If "yes," please explain.

Juror	#
-------	---

SUBSTANTIAL AND UNACCEPTABLE PERSONAL HARDSHIP

In the State of Arizona, jury service is essential to the administration of justice. Accordingly, inconvenience will not be sufficient to excuse a prospective juror. To be excused, a juror must show substantial personal hardship.

1. Would service as a juror in this case create substantial and unacceptable
personal, financial, or professional hardship for you?
Yes No No
Please explain your answer:
2. Do you have any physical difficulty or health problem, including hearing or visual impairment that might interfere with your service as a juror in this case? Yes No Please explain your condition:
3. Do you have any pre-paid travel plans that cannot be rescheduled that would
make it impossible for you to attend court as scheduled?
Yes No
If yes, please describe
4. Does your employer pay you for time missed during jury service? Yes ☐ No ☐ Unsure ☐ *
*If you are unsure, please find out before you return to court for jury selection questioning.
5. Are you an hourly wage earner? Yes No No
6. Are you responsible for the care of a child under the age of 5? Yes No
What arrangements do you have now for child care?
7. Do you have the responsibility of caring for a sick or elderly person? Yes No Please explain:
7. Do you have the responsibility of caring for a sick or elderly person?

Juror #
8. Do you have any personal or professional obligations that you feel would interfere with your ability to be a juror in this case, such as employment or childcare difficulties? Yes No See N
9. If you are chosen to serve on this jury how far will you travel round trip to be in court daily and sit as a juror?(a) Do you have access to reliable transportation?
WHETHER OR NOT YOU BELIEVE HARDSHIP MAY PREVENT YOU FROM BEING ABLE TO SERVE, YOU MUST COMPLETE THE REST OF THE QUESTIONNAIRE
10. What is your age? 11. Male Female
12. What city, state and country were you born and raised in? Born: Raised:
13. Where do you live? County: City/Town of residence:
14. How long have you lived at your present address?
15. Do you: Own Rent Neither own nor rent, but live with family/friends?
16. What is your marital status (check all that apply): Married years Single, never married Single, living with another person as a couple Divorced Separated Widowed
17. What is your race/ethnicity and that of your spouse or domestic partner (if applicable): Yours: Spouse/Partner:
18. If you have children who live outside the home, please list their age(s) and

occupation(s).

Juror#
19. How far did you go in school, and what was your major field of study if you went to college or graduate school? (If you are currently a student, what is your field of study?)
20. How far did your spouse/partner go in school, and what was his or her field of study?
21. What is your occupational status? (Check all that apply.) Work full-time outside the home Work part-time outside the home Homemaker Student Volunteer Unemployed-looking for work Unemployed-not looking for work Retired Self-employed
22. If employed, please indicate the type of work you do. (If you are retired or unemployed, describe the work you did.)
23. Please tell us what civic, political, social, or charitable organizations, including unions or clubs you are affiliated with, belong to or have donated money to.
24. Have you or any family members served in any branch of the armed forces (including the military reserves, National Guard, or ROTC)? If yes, please check one of the following: Volunteer Drafted Who served? What were the dates served? What was the highest rank obtained? What was the nature of your service? (i.e. infantry, officer, mechanic, special ops)
25. Have you, or has any member of your family or a close friend ever been employed in law enforcement or had state or private law enforcement experience?

Examples include: police, sheriff, security guard, private investigator, probation officer, corrections officer or prison or jail employee.

Yes No Street N

Person Organization Title
Example: close friend Police Department Patrol Officer

Juror #
26. Have you, or anyone close to you, ever applied or worked for, volunteered in or otherwise been affiliated with any law enforcement agency of the U.S. government (e.g. FBI, DEA, ATF, U.S. Marshall Service, CIA, NSA, Homeland Security, IRS, etc.) Yes No I If yes, please tell us your relationship to that person and for whom he or she works
27. Have you, a family member, or close friend ever attended law school, or worked for a lawyer, law firm or office, in the court system or for any prosecutor's office, whether local, state or federal? Yes No lawyer relationship to that person and for whom he or she works
28. Do you have any relatives or close friends who work for private criminal defense attorneys, public defenders, legal aid lawyers, or who are involved in criminal defense work? Yes No Solution No
29. Do you have any relatives or close friends who work for local, state, or federal prosecutors? Yes No State, or federal prosecutors? If yes, please tell us your relationship to that person and for whom he or she works:

Juror #
30. Have you or has any member of your family or a close friend ever belonged to, or assisted the work of a victim's rights organization or any organization that advocates for the rights of prisoners or accused criminals? Yes No Street
31. Have you, or anyone close to you ever been incarcerated in any correctional facility or prison; or have you visited or toured any kind of correctional facility or prison? (a) In prison: Yes, myself Yes, friend/family No (b) Visitor: Yes No
32. Have you or has any member of your family or a close friend ever been the victim of any kind of crime, whether it was reported to law enforcement authorities or not? Yes No I If yes, please describe the incident(s) and your relationship to the crime victim:
33. If you have been the victim of a crime how did the incident affect your attitude toward crime, people accused of crime, or the criminal justice system?
34. Have you or has any member of your family or a close friend ever been arrested for, accused of, charged with, or convicted of any crime, except a minor traffic offense, or been the subject of a criminal investigation? Yes No I If yes, please state the person, date, crime, who brought the charges and the outcome:
35. How did these incidents affect your attitude about crime or the criminal justice system?
36. How do you feel about the way the police or prosecutors handled the situation(s)?
37. Have you or anyone close to you ever been falsely accused of a crime? Yes No The

Juror #
Please explain:
38. Do you believe that you, any member of your family or a close friend has ever been treated unfairly or been the victim of misconduct by the local or state police or federal law enforcement authorities? Yes No State police If yes, please explain:
39. Do you have any previous experience as a juror? Yes No No (a) If yes please describe what kind of case and what court it was in: (b) Were you the presiding foreperson or presiding juror? (c) What was the result?
40. Besides jury service have you ever been in a courtroom for any other reason? Yes \[\] No \[\] If yes, please explain.
41. What are your feelings about the effectiveness of our criminal justice system?
42. Describe your general feelings about the following: Law Enforcement Officers: Prosecuting Attorneys: Defense Attorneys: Judges:
43. Based on either your personal experiences or your exposure to and/or interest in crime coverage in the media, would you tend to give more or less importance to the testimony of a law enforcement officer as opposed to any other witness? More importance Less importance Equal importance Please explain your answer:

A famous judge once said: "Bias is unrecognized in the people affected by it." The court and the attorneys expect that you may have read, seen or heard information about this case. We are interested in learning about your exposure to information about this case so that we can understand what thoughts and feelings you may have developed. We appreciate your cooperation in answering these questions as completely as you can.

44. Do you read newspapers?

Juror #
Yes No No I If yes please tell us which newspapers you read:
45. Do you watch any television news shows? Yes \[\sum No \[\]
If yes please tell us which TV news programs you watch:
46. Have you followed the media or press accounts of criminal cases? Yes No I If yes, please describe.
47. Have you ever seen any TV shows, read any news coverage, heard any reports or had any discussion about the prosecution of a man named Kelle Jarka? Yes \(\subseteq \text{No} \subseteq \)
If yes, please tell us what you have seen, read, heard or discussed about that case:
48 Have you read, seen or heard anything about the death of Carol Kennedy in July of 2008? Yes \(\subseteq \text{No} \subseteq \)
Please indicate where you have read, seen or heard about this case; (check all that apply)
☐ TV News☐ Radio News☐ Newspaper
Other news sources
49. What things stands out most in your mind about what you have read, seen or heard?
50. How many times would you estimate you have read, seen or heard something about this case?
 Less than 5 Between 5 and 10 More than 10
51. Have you discussed this case?
At work with co-workers? Yes \[\subseteq No \[\subseteq \]
In your neighborhood? At Church? Yes No Yes No No
100

Juror #					
With family members? With friends?	Yes				
52. Do you or any close friend or family Steven DeMocker, Carol Kennedy, or an Yes No Steven No					
53. Have you discussed this case with an knowledge about it? Yes \(\subseteq \text{No } \subseteq \) If yes, please explain, identifying the pe					
54. When was the last time you saw or h	neard something about this case?				
55. Have you read any of the comments Prescott Daily Courier? Yes No No (a) Have you posted any comments to the Yes No (b)					
56. Even if you have not participated, ha comments posted on the Courier's webs Yes No Please explain your answer:					
57. Based on what you have read, seen of Steve DeMocker? Yes No Steve No St	or heard do you have an impression of				
_	see or hear anything about this case in the see, did you form an idea about what must				
59. Have you ever expressed an opinion Yes No	about this case to anyone?				

Juror #				
Please tell us what your opinion was or is.				
60. Has your opinion about the case or the people involved changed during the time the case has been pending? Yes No Please tell us how it has changed:				
61. What are your hobbies/interests? What do you like to do in your spare time?(a) What television shows do you watch most often?(b) What kind of books or magazines do you read most often?(c) What radio programs do you listen to most often?				
62. Do you know any of the following: County Attorneys: 1) 2) 3)				
Do you know any other present or former members of the County Attorney's Office? Yes No				
Defense Attorneys: 1) 2) 3)				
63. Do you know anyone who works in law enforcement in Yavapai County who has been connected to this case in any way? Yes No Solution If yes, please tell us who you know and how they are connected to the case:				
64. Do you know any other prospective juror who has been called for jury selection in this case? Yes No				
65. The fact that Steven DeMocker is charged with a crime is not evidence that he is guilty of the charges. Are you willing to accept and abide by this rule of law? Yes \[\subsetence \text{No} \subsetence \]				

Juror #
66. Any person charged with a crime must be proven guilty beyond a reasonable doubt before they can be convicted of that crime. Are you willing to accept and abide by this rule of law? Yes \[\] No \[\]
67. Steven DeMocker does not have any obligation to testify or to present evidence or to prove his innocence. The entire responsibility to prove the defendant is guilty beyond a reasonable doubt is on the State. Are you willing to accept and abide by this principle of law? Yes \[\] No \[\]
68. Do you think it is unfair that the prosecution is required to bring you all of the proof required to convict Mr. DeMocker? Yes \[\] No \[\]
60. How would you view Mr. DoMocker if he evenined his Constitutional right to

69. How would you view Mr. DeMocker if he exercised his Constitutional right to remain silent, by not taking the witness stand and offering any testimony?

70. Do you feel that rendering a not-guilty verdict in this case would subject you to criticism by family, friends, business associates, your church members, or others? Yes \[\] No \[\]

72. Is there anything you feel would make it difficult for you to be fair and impartial if selected as a juror in this case?

Yes No

PENALTY IN THE EVENT OF CONVICTION

In the State of Arizona only the crime of first degree murder can cause a defendant to be found eligible for the death penalty.

73. If we reach a second phase of this trial it will be because you and your fellow jurors unanimously found Mr. DeMocker guilty. Mr. DeMocker would start the sentencing phase of the trial with the presumption that life in prison is the appropriate punishment. The prosecution then has the burden of proving beyond a

Juror #
reasonable doubt that there is at least one aggravating factor which would allow the jury to consider death. If you are chosen as a juror in this case, is there any reason you can think of why you would not be able to extend Mr. DeMocker the presumption of a life verdict? Yes \[\] No \[\] Please explain your answer:
74. Do you understand that in deciding the appropriate punishment, though the crime may be considered, it is not the crime itself, but the aggravating factors which the prosecution must establish and prove beyond a reasonable doubt that make the defendant eligible for death? Yes No I do not understand
75. Even if the prosecution proves that the aggravating factor(s) exist the law does not require a sentence of death. A juror could still vote for life in prison and it would be accepted by the State and the Court? Do you understand this unique aspect of the law in a case when the State seeks the death penalty? Yes \[\] No \[\] I do not understand \[\]
76. What is your opinion generally of the death penalty?
77. Is there a particular event in your life that has influenced the way you feel about the death penalty?
78. Have you ever had a different view about the death penalty than you now hold? Yes \[\] No \[\] If so, what caused you to change your opinion?
79. In what types of cases do you think the death penalty should be imposed?
80. Do you feel that life in prison without the possibility of parole is a severe enough punishment for a person convicted of first degree murder? Yes No Why or why not?

Juron	* #	
o ar or	• • •	

	re any crimes that you feel should automatically require the death so, what are they?
For the jury	-
	re selected to serve on this jury, you may be asked to vote for life or you willing to accept this responsibility?
	ng the death penalty, which of the following five statements best your beliefs? Please read them all before checking only one.
	I strongly believe that the death penalty is the <i>only</i> appropriate punishment for intentional and premeditated murder and I would always vote for the death penalty in such a case regardless of the circumstances.
	I believe that the death penalty is appropriate for <i>most</i> crimes involving intentional and premeditated murder and I would return a verdict which imposed the death penalty under most circumstances.
	I believe that the death penalty is appropriate for <i>some</i> intentional and premeditated murders and I could return a verdict that imposed the death penalty under the proper set of circumstances.
	Although I do not believe that the death penalty ever ought to be used, as long as the law provides for it, I could return a verdict that imposed it under the proper set of circumstances.
	Regardless of the facts and circumstances of the intentional and premeditated murder, I could never return a verdict that imposed the death penalty.

85. Please indicate how you feel about the following statement:

Juror #
When it comes to whether a person should be sentenced to death for a premeditated murder, their background and/or the circumstances of the crime do not matter. Agree Disagree Please explain:
86. The law provides that to determine if a sentence of death or life in prison is appropriate, the jury must consider any aspect of the defendant's character, his record and any circumstances of the offense offered by the defense or any other factor that any juror may find. Are there any other factors that you would not consider? Yes No Please explain your answer:

87. When deliberating in the sentencing phase of this trial, each juror is allowed by the law to consider factors even if not mentioned by the lawyers or in the instructions from the court. Do you understand this concept?

Yes No

88. You will hear these factors referred to as "mitigation evidence." The jury does not have to agree unanimously on what the mitigating factors are. Each juror can make their own determination as to what mitigating factor would cause them to vote for a life sentence and that the defense only has to prove that mitigating factor to the personal satisfaction of that individual juror. Do you understand that jurors do not have to reach a unanimous decision with regard to these factors?

Yes No I do not understand how mitigation applies

89. How do you feel about this concept?

90. The defense will present evidence of mitigating factors which are not excuses for the crime but rather reasons why you may consider a punishment other than death. Knowing yourself and your views, and realizing that the law requires you to consider such evidence, would you be willing to consider a sentence of life as opposed to a sentence of death?

91. Please check the one statement below that best summarizes you general views about mitigating factors:

Juror # _____

I feel that mitigating factors should not be considered. The facts of the actual murder should determine the sentence that should be imposed.
I am willing to consider mitigating factors, but would give more importance to facts of the actual crime than any mitigating factors.
I am willing to give the same consideration to the mitigating factors and the facts of the actual crime in deciding what sentence to impose
I am willing to consider both the mitigating factors and the facts of the murder, but I would tend to give more weight to the individual factors about the defendant than the facts of the murder in determining what sentence to impose.
I strongly feel that the individual mitigating factors, not the actual murder should determine the appropriate penalty.
92. If you determine that the appropriate sentence is life, the judge will determine if the sentence to be imposed is life without the possibility of release or life with the possibility of release after at least 25 years in prison have been served. Do you agree with the law that requires the judge, not the jury, to make the decision about which type of life sentence to impose? Yes \[\] No \[\] Please explain:
93. The Court recognizes that the sentencing scheme for a case where the jury will consider life and death for the defendant is a complicated matter. After reading, considering and responding to these questions, do you feel that you generally understand what aggravating and mitigating factors are? Yes \[\] No \[\] I do not understand these factors \[\]
94. Is there anything about your own history or background that would prevent you from considering evidence about the personal background and character traits of Steven DeMocker in deciding the appropriate punishment in this case? Yes No
95. After the introduction to the case by the Court and giving thoughtful answers to

the issues explored in this questionnaire, is there anything you can think of about your reaction to this case or the people involved that would prevent you, if chosen

Juror #				
as a juror, from basing your decisions in this case in court and the instructions on the law by the jud Yes \(\square \) No \(\square \) If no, please explain:				
96. Are you willing to serve on this jury?				
Thank you for your cooperation and your honest r	esponses.			
Signature:	Date			
Print Name:	_			

2873734v1

DEFENDANT'S PROPOSED JURY SELECTION SCHEDULE

May 21, 2010 15	May 4-14, 2010	April 30, 2010	April 14, 2010	April 9, 2010	(NOTE: Given the Jury Commissioner's estimate of a 50% to 55% resp sometime before the end of this week, possibly as early as Wednesday.)	April 5-9, 2010	March/Early April 2010	December 17, 2009	DATE
Final Jury Selection (On or hopefully before this date, the parties will exercise strikes and the jury panel of 16 should be selected.)	Individual voir dire; first 15 jurors called to the courthouse; that group would be addressed by the Court, either live or by agreed upon video presentation; the first 15 jurors would then be examined individually and this process would be repeated each day until 36 prospective jurors are identified.	Final review of remaining jury selection issues. (Some time might be reserved on this date for the Court to consider any new hardship questions and other questions with respect to voir dire.)	Court and counsel to meet to discuss hardship, agreed upon challenges for cause; jurors not excused should be advised to appear in groups of 15 on particular dates beginning May 4.	Copies of completed questionnaires scanned and distributed to all counsel (this process may have been ongoing during the week of April 5 and may be completed before the end of the week).	(NOTE: Given the Jury Commissioner's estimate of a 50% to 55% response rate, we should have at least 225 questionnaires sometime before the end of this week, possibly as early as Wednesday.)	Prospective jurors come to courthouse to fill out questionnaires (100 per each day; 50 a.m. and 50 p.m.)	Jury Commissioner to send out 400-500 jury summons (each summons should identify a specific date in the week of April 5, 2010, for each group of 50 to appear)	Conference with all counsel re: proposed questionnaire and schedule	EVENT